



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

September 13, 1993

Chairman Scott E. Thomas
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: AOR 1993-17

Dear Chairman Thomas:

Comment On
AOR 1993-17

I am writing to comment on AOR 1993-17 submitted by the Democratic State Committee (DSC) relative to certain aspects of the federal allocation regulations.

As you may know, the 1990 and 1992 changes to the federal allocation regulations created a conflict between Massachusetts law and the revised federal regulation. Based upon this office's review of federal and state law and after consultation with Federal Election Commission's (FEC) Office of the General Counsel we issued interpretative bulletin OCPF-IB-93-01, a copy of which is enclosed for your review and consideration within the context of the DSC's request.

There are two points which are raised by the DSC which I wish to address. The first issue concerns the ballot composition formula. It is our understanding that the formula points are, with the one exception of the extra non-federal point (line 11 on Schedule H1), mandated by the regulations. See 11 CFR 106.5 (d)(1)(ii) as amended by Federal Register, Vol. 57, No. 50 on March 13, 1992 which states, in part, that:

State party committees shall also include in the ratio one additional non-federal office if any partisan local candidates are expected on the ballot in any regularly scheduled election during the two-year congressional election cycle (emphasis added).

Based upon our understanding we prepared the two sample Schedule H1s which attached to the enclosed interpretative bulletin.

In AOR 1993-17, the DSC argues that line 9 of Schedule H1

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should be "0" for a number of reasons including the fact that the state party does not participate in local elections and that these are generally non-partisan. While the DSC apparently does not participate in local elections (although they could choose to do so in the future), other state party committee(s) may participate in such local elections. In addition, although it is true that most local elections in Massachusetts are non-partisan, I note for your information that there are still 25 communities with partisan preliminaries or caucuses. See Public Document 43 "Massachusetts Election Statistics 1992" at pages 4 and 5.

I wish to emphasize that this office's fundamental concern in this matter is to provide clear direction to the state party committees. Therefore, we welcome your review as to whether federal law or regulation mandates this particular "point" and the resulting federal ballot composition ratio percentage.

The second question asked by the DSC is whether federal regulations preempt state law relative to payment of the DSC's administrative costs. This office recognizes that federal law and regulation generally preempts state law. Specifically, we recognize that federal law preempts state law to the extent that federal law requires all payments to be made from a state party committee's federal account. In addition, this office recognizes that the ballot composition ratio, whatever the FEC concludes is the correct ratio, is also established by federal regulation and would govern the maximum payment that could be transferred from a state account to the federal account for shared expenses. These principles are set forth in IB-93-01. However, it is our opinion that federal law does not preempt state law in the narrow circumstances where federal law permits payment of a state's share of a joint state/federal expense while state law, in our view, mandates such payment. See IB-93-01 at page 2, footnote 2. Indeed, as noted in IB-93-01 the bulletin makes it possible for state party committees to comply with federal law and, for all practical purposes, with state law as well.

As you know federal law does not permit a state committee to pay for the federal share of joint expenses from state funds because part or all of a state funds may not be subject to the prohibitions and limitations of federal law. For similar reasons, Massachusetts does not permit a state committee to pay for the state share of joint expenses from federal funds since those funds may not be subject to Massachusetts prohibitions and limitations set forth in its campaign finance law, M.G.L. c.55. As you may know Massachusetts has different and, in some cases stricter, requirements relative to corporate contributions (which are absolutely prohibited) and contributions from political committees not organized on behalf of an individual candidate, a so-called political action committee (which are limited to \$1,000). See M.G.L. c.55, ss.

6 and 8.

Finally, I do not believe that this office's conclusions regarding this second point causes any significant administrative burden to the state party committees since the bulletin is tailored to federal law, regulation and forms. Compliance with IB-93-01 requires only that the state party committees use the relevant allocation method established by federal regulation, file monthly reports which may use the form required by the FEC, and transfer the appropriate amount of funds from the state to the federal account in accordance with federal regulation. It appears to us that this solution responds to the practical concerns that the state committees may have relative to complying with the FEC and this office and also results in full compliance with federal law while also complying with the spirit of the state law if not its letter which as previously noted is technically impossible under current federal regulations.

Thank you for your consideration. If you have any questions regarding this matter please do not hesitate to contact this office's General Counsel, Peter Sturges.

Very truly yours,


Mary F. McTigue
Director

Enclosure

cc: Maureen E. Guarde
Gene Hartigan



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MARY F. McTIGUE
DIRECTOR

TO: State Party Committees
Executive Director

FROM: Mary F. McTigue *MFM*

DATE: April 15, 1993

SUBJECT: State Reporting Requirements Under Federal
Allocation Regulations

As you know, the Office of Campaign and Political Finance (OCPF) supported state party committee efforts to amend the Federal Election Commission (FEC) allocation regulations. This effort was undertaken in order to make it possible for Massachusetts' state party committees to comply with the FEC reporting requirements in a manner that was also consistent with state law requirements regarding depository accounts. Unfortunately, this effort was not entirely successful and, as a result, there continues to be a conflict in the reporting requirements of state and federal law.

During the past year OCPF has worked with each of the state party committees to develop a reporting mechanism that permits compliance with federal law and regulation and, at the same time, complies with the basic requirements of state law. We have appreciated your cooperation and assistance in this effort.

Based upon this past experience and after consultation with FEC's Office of the General Counsel regarding the federal aspects of this bulletin including the pre-emption issue, OCPF has issued the attached Interpretative Bulletin, OCPF-IB-93-01. If you have any questions regarding federal law please feel free to contact Susan Propper, Assistant General Counsel of the Office of the General Counsel at the FEC. For your information, I have also enclosed a copy of FEC's Record entitled "Revised Supplement on Allocation."

If you have any questions regarding the implementation of this bulletin or the requirements of state law relative to a state party committee, please contact OCPF's Director of Auditing, Brad Balzer. Thank you for your continued cooperation.



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MARY F. McTIGUE
DIRECTOR

OCPPF-IB-93-01
Issued: April 15, 1993

INTERPRETATIVE BULLETIN

**Relationship Between Federal Allocation
Requirements and Massachusetts State Law**

This interpretative bulletin is being issued in order to provide guidance and direction to state party committees which maintain both a federal and state account in view of changes to the Federal Election Commission (FEC) allocation regulations.

I. Background - Prior to the 1990 changes and 1992 amendments to the FEC's allocation regulations (11 CFR Part 106 et seq.), state party committees which maintained federal and state accounts were required to pay for state related expenses directly out of their depository account in accordance with the requirements of M.G.L. c.55, ss.7 and 19.

Changes in the federal allocation regulations, however, have created a conflict between state and federal law and regulation for expenses relative to activities that jointly benefit both federal and state candidates and elections. Specifically, federal regulations now require that a state party committee pay the entire amount of a so-called allocable or joint expenses from its federal account. The committees may (but are not required by federal regulation) reimburse the federal account for the state share of the joint activity based upon specific allocation formulas by transferring funds from the state account to the federal account. See 11 CFR Part 106.5(g)(1)(i). In the alternative, state party committees may set up a separate allocation account and transfer funds from the federal and state account into that account. See 11 CFR Part 106.5(g)(1)(ii).

In Massachusetts, the two existing state party committees pay for joint activities out of the federal account. However, whether state funds are transferred to an allocation account or transferred to the federal account, the federal regulation prevents the state party committees from complying with certain requirements of M.G.L. c.55 as noted below.

II. Massachusetts Law - The fundamental purpose of the Massachusetts campaign finance law, M.G.L. c.55, is "to provide for public disclosure of political contributions and expenditures, and the regulations of said contributions and expenditures" (emphasis added). See St. 1975, c.151.

In addition, Chapter 55 is viewed as a comprehensive law which the Supreme Judicial Court has interpreted reaches "all political fund raising and expenditures within the Commonwealth." See Anderson v. City of Boston 376 Mass. 178 (1978).

More specifically, M.G.L. c.55, s.7 states, in part, that:

A political committee may receive money or its equivalent, or expend or disburse or promise to expend or disburse the same for the purposes of aiding or promoting the success or defeat of a candidate at a primary or election or a political party . . . , and of other purpose expressly authorized by this chapter subject, however, to the provisions thereof.

In addition, M.G.L. c.55, s.19 requires that all payments by state party committees be made (1) only from funds on deposit in the depository account, (2) on specially formatted checks drawn on such depository and (3) payable to a named payee. In addition, section 7 has a complementary requirement that each payee certify the performance or delivery of any service or good.

Reading the statute as a whole, it is OCPF's opinion that state party committees are required to pay for and to report all state election activity¹ financed by the state party committee through the depository account system. Therefore, activity which is solely state election activity must be paid for entirely from the state party depository account directly to the person or persons providing the services or goods.

In addition, the state party's state regulated committee must also pay the full amount of the state share permitted by federal regulation for any state election activity which is part of joint or allocable election activity from funds in the state party committee's state depository account.² In order to comply with the requirements of federal law, OCPF recognizes that the state party will have to pay for the joint activity from its federal account and then transfer the full proportionate state share to the federal account. However, the state party's state regulated committee must still provide public disclosure to OCPF.

1. For the purposes of this interpretative bulletin, a reference to the state election activity shall, unless the context otherwise requires, also include county and municipal election activity.

2. OCPF recognizes that Federal law and regulation regarding federal payment procedures and reporting in connection with a federal account preempts state law. However, in OCPF's opinion, federal law does not preempt state law in this instance where the federal law merely permits payment of a state's share of a joint state/federal expense while state law mandates such payment.

III. Allocation Method - The state party committee must use the appropriate method and ratio to allocate costs between the party's state and federal accounts as required by federal law and regulation. See 11 CFR 106.5. For state party committees, these methods include the funds received ratio relative to fund raising activities, the time or space ratio relative to media communication and ballot composition ratio relative to generic voter drives and overhead expenses.

The ballot composition ratio is calculated on Federal Form H1. For the 1993-94 election cycle, the ballot composition ratio provides for a 75/25 percent state/federal allocation (See Exhibit "A") unless the extra non-federal point permitted by federal law is added to the ratio (See Exhibit "B"). Federal law requires this form to be filed with the FEC and must, in accordance with this bulletin, also be filed with OCPF. In computing the non-federal offices expected on the ballot at the next state elections care should be taken to reflect accurately those state, county and municipal offices that will, in fact, appear the relevant election ballot. Failure to compute the ballot composition ratio correctly will effect the federal and state share for these expenditures and the required costs that must be underwritten by each party's state regulated account in order to comply with the requirements of M.G.L. c.55 and this interpretative bulletin.

IV. Implementation - In order to resolve the reporting conflict between federal and state law and to provide for appropriate and uniform public disclosure at the state level, each state party committee must comply with the following:

A. Financial activity undertaken solely for the purpose of supporting or opposing state, county or municipal candidates in Massachusetts must be deposited and disbursed through the state party's depository account.

B. Each state party committee must pay the full state share permitted under federal regulation of any joint or allocable state/federal expense by transferring the state share from the state depository account to its federal account in a manner consistent with the requirements of federal law and regulation including the so-called 70 day time period.

C. Each state party committee must file monthly by the fifth of each month a report setting forth the names and addresses of any payee paid from the federal account for joint or allocable expenses, the amount of the total payment, the amount of the state's proportionate share, the allocation formula used to determine the state's share, and the purposes for which the money was paid. In filing the report required by M.G.L. c.55, s.19 as implemented by this interpretative bulletin, the state party committees may use the same or a similar format that it uses to report activity to the FEC such as Schedule H4 or any other format approved in advance by OCPF.

D. All reports beginning with the report due on or before June 5, 1993 for the period ending May 31, 1993 shall comply with the requirements set forth herein.

In addition, OCPF requests that each state party committee review its expenditures made after January 1, 1993 and provide OCPF with the same information on activity from January 1, 1993 through May 31, 1993 no later than July 1, 1993.

E. Each state party committee shall file with the director FEC Schedule H1 on biannual basis reflecting the committee's calculation of the state/federal ballot composition ratio for the biannual election cycle.

If you have any questions or need further information regarding the application of federal law and regulation you should contact a FEC public information specialist at 1-800-424-9530. If you have questions regarding this interpretative bulletin or any other campaign finance matter please do not hesitate to contact OCPF's Director of Auditing, Brad Balzer, at 1-800-462-OCPF or 617-727-8352.